

Jordan



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sweet Hill Associates, Inc.

File: B-270386

Date: January 5, 1996

DECISION

Sweet Hill Associates, Inc. (SHA) protests the non-competitive award of a contract No. 624-0001-C-00-5-52-00, to The African-American Institute (AAI) by the Agency for International Development (AID), Department of State. SHA contends that the award was not properly justified and that the agency should have allowed the protester to compete for the requirement.

We dismiss the protest.

The AID program in Nigeria supports the development of integrated health care delivery through non-governmental organizations. Since 1988, AID had provided this humanitarian assistance through a logistical support unit (LSU) operated by AAI on a cost-reimbursement basis. Until August 1995, SHA was a subcontractor to AAI. On February 28, 1995, the President of the United States "decertified" Nigeria as a penalty for failing to effectively combat drug trafficking. Under the terms of this decertification, AID was required to terminate all but certain excepted development assistance within 8 months (October 28, 1995). On June 28, the AID Administrator, pursuant to delegated authority in the Fiscal Year 1995 Appropriations Act (Pub. L. 103-306), approved continued assistance to Nigeria. However, after AID notified Congress of the Administrator's action on August 4, the Chairman of the Senate Foreign Relations Committee requested that AID's Nigeria program be placed on "hold" until further notice. The "hold" was lifted on September 28.

With only 2 days to obligate the necessary funds and 1 month before the expiration of the AAI contract, AID determined that it did not have sufficient time to conduct a competition for the LSU requirement. AID determined that extension of the current AAI contract was imprudent since it was confusing, poorly written, and had resulted in significant concerns about incurred costs. Consequently, AID awarded a cost-reimbursement, letter contract to AAI to run from September 29, 1995 to May 31, 1996. The terms of the letter contract cover the current LSU requirements which were formerly covered by AAI's prior contract.

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SHA protests that the agency should have conducted a competition prior to awarding a contract for the LSU requirement. As relief, it requests that our Office recommend termination of the letter contract, extension of the prior AAI contract, and the subsequent conduct of a full and open competition for the LSU requirement. The AID agency report states that the letter contract was awarded as a bridge to provide continuity in the LSU maintenance for the time necessary to conduct a competition for the requirement. The AID contracting officer is currently preparing to conduct a competition for a long-term LSU contract to commence at the end of May 1996.

The agency argues that its preparing to conduct a competition for the LSU requirement, in conjunction with issuing the letter contract to the incumbent contractor essentially provides the relief requested by the protester. We agree that the cancellation of the letter contract and reinstatement of the former contract would provide no meaningful relief to the protester.¹ Since SHA has already received essentially the relief requested, its protest is academic. The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Management Servs., Inc.-Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299. The General Accounting Office will not consider protests where the issue presented has no practical consequences with regard to an existing federal government procurement, and thus is of purely academic interest.

SHA takes the position that its protest is not academic because there is no guarantee that the agency will conduct a competition for the LSU requirement. In this regard, it alleges that AID plans to end assistance to Nigeria by the end of the current fiscal year. However, protests that merely anticipate improper agency action are speculative and premature. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512. Consequently, there is no basis for us to consider the protester's claim at this time.

The protest is dismissed.

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¹The fact that SHA was formerly a subcontractor on AAI's LSU contract does not change our conclusion. SHA was terminated from that contract prior to the award of the letter contract. Any claim that SHA may have with respect to the termination or claims to fees AAI receives under the letter contract are matters between third parties which are not for resolution by our Office, and which are currently being adjudicated in another forum.